

1  
2  
3  
4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6  
7 HENDRIK BLOCK,

8 Plaintiff,

9 v.

10  
11 ESKANDAR T. ALZAMZAMI dba Fatboy  
12 Market, et al.,

13 Defendants.

14 Case No. 1:23-cv-00061-SKO

15  
16 **ORDER DISCHARGING ORDER TO  
SHOW CAUSE**

17  
18 **FINDINGS AND RECOMMENDATIONS  
TO DECLINE SUPPLEMENTAL  
JURISDICTION OVER PLAINTIFF'S  
STATE LAW CLAIMS**

19 (Docs. 1, 8, 9)

20 **14 DAY DEADLINE**

21 Clerk to Assign District Judge

22  
23 **I. INTRODUCTION**

24 On January 12, 2023, Plaintiff Hendrik Block ("Plaintiff") filed his Complaint against  
25 Defendants Eskandar T. Alzamzami dba Fatboy Market and Nahla Mohammed Muhamram alleging  
claims under the American with Disabilities Act (ADA), California's Unruh Civil Rights Act, and  
California's Health and Safety Code. (Doc. 1). These claims stem from alleged barriers Plaintiff  
encountered (such as a lack of designated accessible parking stalls) while he visited a facility owned,  
operated, or leased by Defendants—Fatboy Market. (*See id.*) Neither Defendant has appeared.  
Plaintiff has obtained a clerk's entry of default against Defendants but has not yet moved for entry  
of default judgment. (Docs. 6, 7.)

26 On March 20, 2023, the undersigned ordered Plaintiff to show cause why the Court should  
27 not decline to exercise supplemental jurisdiction over his Unruh Act claim in light of the Ninth  
28 Circuit's decision in *Vo v. Choi*. (*See Doc. 8.*); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (affirming

1 a district court’s decision to decline supplemental jurisdiction over an Unruh Act claim); *see* 28  
2 U.S.C. § 1367(c). Plaintiff timely filed a response on April 3, 2023. (Doc. 9.) For the reasons  
3 discussed below, the undersigned shall discharge the order to show cause and shall recommend that  
4 supplemental jurisdiction over Plaintiff’s Unruh Act claim, as well as his California Health & Safety  
5 Code claims, be declined and those claims be dismissed without prejudice.

## 6 II. **LEGAL STANDARDS**

7 Under 28 U.S.C. § 1367(a), a court that has original jurisdiction over a civil action “shall  
8 have supplemental jurisdiction over all other claims that are so related to claims in the action within  
9 such original jurisdiction that they form part of the same case or controversy under Article III of the  
10 United States Constitution.” The Ninth Circuit has concluded that ADA and Unruh Act claims that  
11 derive from a common nucleus of operative fact “form part of the ‘same case or controversy’ for  
12 purposes of § 1367(a).” *Arroyo v. Rosas*, 19 F.4th 1202, 1209 (9th Cir. 2021).

13 However, even where supplemental jurisdiction over a claim exists under § 1367(a), the  
14 Court may decline jurisdiction over the claim under § 1367(c) if:

- 15 (1) the claim raises a novel or complex issue of State law,
- 16 (2) the claim substantially predominates over the claim or claims over which the  
district court has original jurisdiction,
- 17 (3) the district court has dismissed all claims over which it has original jurisdiction,  
or
- 19 (4) in exceptional circumstances, there are other compelling reasons for declining  
jurisdiction.

20 § 1367(c)(1)-(4).

21 Pertinent here, a court deciding whether to apply § 1367(c)(4) must make “a two-part  
22 inquiry.” *Arroyo*, 19 F.4th at 1210. “First, the district court must articulate why the circumstances  
23 of the case are exceptional within the meaning of § 1367(c)(4).” *Id.* (citations and internal quotation  
24 marks omitted). “Second, in determining whether there are compelling reasons for declining  
25 jurisdiction in a given case, the court should consider what best serves the principles of economy,  
26 convenience, fairness, and comity which underlie the pendent jurisdiction doctrine articulated in  
27 [*United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966)].” *Id.* (citations and internal quotation  
28 marks omitted).

1        After considering § 1367(c)(4) and California’s requirements for bringing Unruh Act claims,  
 2 “[n]umerous federal district courts across California have declined to exercise supplemental  
 3 jurisdiction over Unruh Act . . . claims brought alongside ADA claims.” *Rutherford v. Nuway Ins.*  
 4 *Agency Inc.*, No. SACV 21-00576-CJC-JDE, 2021 WL 4572008, at \*1 (C.D. Cal. Apr. 1, 2021).  
 5 Underlying these decisions is “the recent confluence of several California-law rules [that] have  
 6 combined to create a highly unusual systemic impact on ADA-based Unruh Act cases that clearly  
 7 threatens to have a significant adverse impact on federal-state comity.” *Arroyo*, 19 F.4th at 1211.

8        Notably, Congress adopted the ADA to address the discrimination encountered by persons  
 9 with disabilities, providing a private cause of action to seek injunctive, but not monetary, relief. *See*  
 10 *Arroyo v. Rosas*, 19 F.4th 1202, 1205 (9th Cir. 2021) (discussing background and relief available  
 11 under the ADA). The Unruh Act likewise prohibits disability discrimination, containing a provision,  
 12 Cal. Civ. Code § 51(f), stating that a violation of the ADA also violates the Unruh Act. However,  
 13 unlike the ADA, the Unruh Act allows a plaintiff to recover “up to a maximum of three times the  
 14 amount of actual damage but in no case less than four thousand dollars.” Cal. Civ. Code § 52(a).

15        In response to perceived abuses of the Unruh Act, California has enacted requirements for  
 16 bringing such claims, which requirements the Ninth Circuit has assumed, without deciding, “apply  
 17 only in California state court.” *Vo*, 49 F.4th at 1170. For example a provision was added (1)  
 18 regarding the contents of demand letters, Cal. Civ. Code § 55.31; (2) imposing heightened pleading  
 19 requirements, Cal. Civ. Code § 425.50(a); and (3) requiring an additional filing fee of \$1,000 for so  
 20 called “high-frequency litigants,” Cal. Gov’t Code § 70616.5(b), *see* Cal. Civ. Code § 425.55(b)  
 21 (defining a high-frequency litigant to include “[a] plaintiff who has filed 10 or more complaints  
 22 alleging a construction-related accessibility violation within the 12-month period immediately  
 23 preceding the filing of the current complaint alleging a construction-related accessibility  
 24 violation.”).

25        All of these requirements<sup>1</sup> apply to claims alleging a construction-related accessibility  
 26 violation, defined as involving “a provision, standard, or regulation under state or federal law  
 27 requiring compliance with standards for making new construction and existing facilities accessible

---

28 <sup>1</sup> Cal. Civ. Code § 55.31(a); Cal. Civ. Code § 425.50(a), Cal. Gov’t Code § 70616.5(a).

1 to persons with disabilities,” including those related to the ADA. Cal. Civ. Code § 55.52(a)(1), (6);  
2 *see* Cal. Civ. Code § 55.3(a)(2). By enacting such restrictions, California has expressed a “desire  
3 to limit the financial burdens California’s businesses may face from claims for statutory damages  
4 under the Unruh Act.” *Arroyo*, 19 F.4th at 1209 (internal quotations omitted). However, “Unruh  
5 Act plaintiffs have evaded these limits by filing in a federal forum in which [they] can claim these  
6 state law damages in a manner inconsistent with the state law’s requirements.” *Arroyo*, 19 F.4th at  
7 1213 (internal quotation marks omitted). Consequently, “the procedural strictures that California  
8 put in place have been rendered largely toothless, because they can now be readily evaded.” *Id.*

9 Recently, the Ninth Circuit provided substantial guidance on this issue in *Vo v. Choi* in  
10 affirming a district court’s order denying supplemental jurisdiction over an Unruh Act claim under  
11 § 1337(c)(4). *Vo*, 49 F.4th at 1168. In that case, the district court declined supplemental jurisdiction  
12 over the Unruh Act claim after giving the plaintiff the opportunity to respond and before addressing  
13 the merits of the case. *Id.* at 1168-69. In reviewing the district court’s decision, the Ninth Circuit  
14 held that the district court sufficiently explained why the circumstances of the case were exceptional  
15 under § 1337(c)(4), agreeing with the district court that “it would not be ‘fair’ to defendants and ‘an  
16 affront to the comity between federal and state courts’ to allow plaintiffs to evade California’s  
17 procedural requirements by bringing their claims in federal court.” *Id.* at 1171. The Court also  
18 affirmed the district court’s finding that the balance of the *Gibbs* values—economy, convenience,  
19 fairness, and comity—provided compelling reasons to decline supplemental jurisdiction, stating that  
20 “the district court [properly] analyzed Vo’s situation under the *Gibbs* values and determined that the  
21 values of fairness and comity favored not retaining jurisdiction over the claim.” *Id.* at 1172.  
22 Accordingly, “[g]iven these very real concerns, in addition to the deferential standard of review,  
23 [the Ninth Circuit saw] no reason to hold that the district court abused its discretion in determining  
24 there were compelling reasons to decline jurisdiction over the Unruh Act claim.” *Id.*

### III. ANALYSIS

26 The Court begins with the first part of the two-step inquiry under § 1367(c)(4)—whether the  
27 circumstances here are exceptional. *Vo*, 49 F.4th at 1171.

28 As discussed above, California has enacted various requirements that apply to claims

1 alleging a construction-related accessibility violation. If the Court were to exercise jurisdiction over  
2 Plaintiff's Unruh Act claim, Plaintiff would be permitted to avoid these requirements. *See Arroyo*,  
3 19 F.4th at 1213 (noting that potential evasion of California's requirements met exceptional-  
4 circumstances prong of § 1367(c)(4)). Further, such evasion would undermine California's policy  
5 interests in enforcing its requirements—providing monetary relief but limiting burdens on small  
6 businesses and disincentivizing plaintiffs' attorneys from obtaining “monetary settlements at the  
7 expense of forward-looking relief that might benefit the general public.” *Id.* Plaintiff offers no  
8 argument for why such circumstances should not be deemed exceptional, and there is “little doubt  
9 that the first prong [under § 1367(c)(4)] is satisfied here.” *Vo*, 49 F.4th at 1171. *See also Garcia v.*  
10 *Maciel*, No. 21-CV-03743-JCS, 2022 WL 395316, at \*2 (N.D. Cal. Feb. 9, 2022) (collecting cases).

11       Turning to the second part of the inquiry—whether there are other compelling reasons for  
12 declining jurisdiction—the Court considers the *Gibbs* values of economy, convenience, fairness,  
13 and comity. *Vo*, 49 F.4th at 1171. Importantly, this case is an early stage of the litigation—  
14 Defendants have not appeared. While Plaintiff has obtained a clerk's entry of default against  
15 Defendants, he has not yet moved for default judgment, and thus, the merits of Plaintiff's claims  
16 have not yet been addressed. *See Arroyo*, 19 F.4th at 1214 (noting that the *Gibbs* values did not  
17 support declining supplemental jurisdiction where the case was at a “very late stage”). This is not  
18 a case “where it makes no sense to decline jurisdiction . . . over a pendent state law claim that that  
19 court has effectively already decided.” *Id.* Notably, Plaintiff makes no argument that the stage of  
20 this case warrants exercising jurisdiction.

21       Moreover, in light of the above discussion of California's requirements for Unruh Act  
22 claims, it would not be fair, nor would comity be served, by allowing Plaintiff's Unruh Act claim to  
23 proceed without the state court being able to enforce its policy interests as reflected in its various  
24 procedural requirements. *Id.* at 1213 (noting “comity-based concerns that California's policy  
25 objectives in this area were being wholly thwarted” by plaintiffs being able to bring Unruh Act  
26 claims in federal court). On this issue, Plaintiff concedes in his response to the show cause order  
27 that he would be considered a high-frequency litigant and would otherwise have to meet certain  
28

1 California requirements, such as paying the \$1,000 filing fee in state court.<sup>2</sup> (Doc. 9 at 2 (“Plaintiff  
 2 acknowledges that he would be considered a high-frequency litigant under California law as he filed  
 3 more than ten construction-related accessibility claims in the twelve months preceding the filing of  
 4 the instant action.”).)

5 Plaintiff raises two arguments for why the Court should exercise jurisdiction. First, Plaintiff  
 6 states that his complaint meets the heightened pleading requirements of § 425.50. (See Doc. 9 at 2.)  
 7 At this stage, however, the Court only need to determine whether California’s requirements are  
 8 implicated, not whether they are in fact met. As *Vo* noted, whether a Plaintiff “has satisfied the  
 9 heightened pleading requirements” imposed in California is a question for the state court because  
 10 “[f]orcing the district court to determine if [this is] in fact true would itself run afoul of the *Gibbs*  
 11 values—especially comity,” and would deprive California of playing its “critical role in effectuating  
 12 the policies underlying [its] reforms.” *Vo*, 49 F.4th at 1173-74 (internal citation omitted).

13 Second, Plaintiff contends that requiring him to bring a second action in state court “would  
 14 be duplicative and would only increase the ultimate burden on the subject business, as Plaintiff  
 15 would be entitled to seek recovery of the additional attorney’s fees and costs spent bringing the  
 16 second action.” (Doc. 9 at 3.) As an initial matter, this argument improperly assumes that Plaintiff  
 17 will be successful in this action. However, even accepting such an assumption, the fact that the  
 18 litigation could prove duplicative or increase costs does not, in light of the other considerations,  
 19 warrant retaining jurisdiction. As one court has concluded, “if plaintiff legitimately seeks to litigate  
 20 this action in a single forum, plaintiff may dismiss this action and refile it in a state court in  
 21 accordance with the requirements California has imposed on such actions.” *Garibay v. Rodriguez*,  
 22 No. CV 18-9187 PA (AFMX), 2019 WL 5204294, at \*6 (C.D. Cal. Aug. 27, 2019). Moreover, it is  
 23 California’s prerogative to impose a heightened filing fee for high-frequency litigants in an effort to  
 24 curb abuses of the Unruh Act at the risk of the fee being ultimately paid by defendants. It would  
 25 undermine comity and fairness were Plaintiff permitted to proceed with his Unruh Act claim in light  
 26 of California’s policy concerns.

27  
 28 <sup>2</sup> While the Court acknowledges Plaintiff’s concession, it need not determine whether he is in fact a high-frequency  
 litigant. *Vo*, 49 F.4th at 1174 (noting that court was not required to determine whether the plaintiff was in fact a high-  
 frequency litigant).

1        Accordingly, considering the two-step inquiry under § 1367(c)(4), the undersigned  
2 concludes that this case presents “exceptional circumstances” such that “there are other compelling  
3 reasons for declining [supplemental] jurisdiction” over Plaintiff’s Unruh Act and Health & Safety  
4 Code claims.<sup>3</sup>

5                   **IV. ORDER AND RECOMMENDATIONS**

6        The Court’s order to show cause (Doc. 8) is hereby DISCHARGED. For the reasons given  
7 above, IT IS RECOMMENDED as follows:

8        1. Pursuant to 28 U.S.C. § 1367(c)(4) and *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022),  
9                    the Court DECLINE to exercise supplemental jurisdiction over Plaintiff’s Unruh Act  
10                  claim and Plaintiff’s Cal. Health & Safety Code § 19955 and § 19959 claims; and  
11        2. Plaintiff’s Unruh Act and Cal. Health & Safety Code § 19955 and § 19959 claims be  
12                  DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1367(c)(4).

13        The Clerk of Court is DIRECTED to assign a District Judge to this action.

14        These findings and recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen**  
16 **(14) days** after being served with these findings and recommendations, any party may file written  
17 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
18 Findings and Recommendations.” The parties are advised that failure to file objections within the  
19 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
20 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21        IT IS SO ORDERED.

22        Dated: April 13, 2023

23                    /s/ Sheila K. Oberto  
24                    UNITED STATES MAGISTRATE JUDGE

25  
26  
27        <sup>3</sup> Plaintiff’s California Health & Safety Code claims are subject to the same heightened pleading and filing requirements  
28 as his Unruh Act claim. *See Gilbert v. Singh*, No. 1:21cv1338-AWI-HBK, 2023 WL 2239335, \*2 (E.D. Cal. Feb. 27,  
2023). Therefore, the same considerations that counsel against maintaining supplemental jurisdiction over Plaintiff’s  
Unruh Act claims apply equally to Plaintiff’s Health & Safety Code claims. *See id.*